

R E M A R K S

Applicant has carefully considered the above identified Office Action, and in response thereto is addressing each issue raised by the examiner in the remarks hereinbelow. In this regard, applicant is canceling without prejudice claims 7, 13 and 18; and amending claims 1, 8 and 14.

Claim Rejection 35 USC 102(b)

Applicant has amended claims 1, 8 and 14 to avoid the Johnson '188 patent. Claims 1 and 8 have been amended by describing an extension passage leading to an extension slot in the latch and by moving the locking portion axially to remove thereof from the extension slot. Claim 14 has been amended by describing an extension passage leading to an extension slot. Johnson does not teach or suggest a latch with an extension passage leading to an extension slot. Johnson merely teaches retaining an elongated bill 27 of a hand grip 25 in a recess 33 and a loop shaped latch (staple) 43 mounted to a jamb 12. The hand grip 25 is only rotated to remove the elongated bill 27 from the loop shaped latch 43. The axial movement of the hand grip 25 is not required to remove the elongated bill 27 from the loop shaped latch 43. Applicant's invention (as claimed) requires that the handle be axially moved and pivoted to remove the locking portion from the handle latch. A compression spring 42 only serves the purpose of pulling the elongated bill 27 into the recess 33.

Claim 14 discloses biasing a handle radially such that the locking portion is retained in the extension passage. Johnson does not teach or suggest a handle that is radially biased into a latch. Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference, Scripps Clinic & Research Foundation v. Genentech Inc., 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991). Johnson does not disclose a handle that is radially biased into a latch. All claims dependent upon a newly allowable independent claims are also allowable.

Claim Rejection 35 USC 103(a).

Applicant has amended claims 1, 8 and 14 to avoid the Johnson '188 patent in further view the Kassai '176 patent. Claims 1 and 8 have been amended by describing an extension passage leading to an extension slot in the latch and by moving the locking portion axially to remove thereof from the extension slot. Claim 14 has been amended by describing an extension passage leading to an extension slot in the latch.

Applicant respectfully disagrees with examiner concerning the combination of Johnson in view of Kassai to reject claims 1, 8 and 14.

MPEP 2143 states there are three requirements to establish a case of obviousness:

- 1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings.
- 2) There must be a reasonable expectation of success.
- 3) The prior art reference must teach or suggest all claim limitations.

Johnson teaches retaining an elongated bill 27 of a hand grip 25 in a recess 33. Johnson also teaches a loop shaped latch (staple) 43 that is stationary and attached to a jamb 12. The hand grip 25 is only rotated to remove the elongated bill 27 from the loop shaped latch 43. The axial movement of the hand grip 25 is not required to remove the elongated bill 27 from the loop shaped latch 43. The Johnson device latches a swinging door. Kassai teaches a rotary latch for a baby carriage.

The Kassai locking mechanism is quite complicated and includes not only a hook 15, a block 21, a spring 36, knob 16 and a rod 33, but a first spring seat 42 and a second spring seat 43 retained in a tube of the baby carriage. The rod 33 extends from a push rod 12 and the hook 15 is pivotally retained by the rod 33. The hook includes a cylindrical portion 20 with a pair of opposing keys 22. The block 15 includes a bore and a pair opposing keyways 23 cut into the bore. The bore is sized to be received by the cylindrical portion 20 and the keyways 23 are sized to receive the pair of opposing keys 22. The rotation of the block 21 is restrained by the first and second spring seats. Rotation of the block 21 and

the hook 15 is implemented by pushing the knob 16 inward, until the keyways engage the pair of opposing keys. The hook 15 is latched around engaging pins on different areas of the baby carriage.

Examiner is combining a relatively simple swinging door latch with a reasonably complicated pivoting latch to collapse or assemble a baby carriage. Examiner must provide a motivation or suggestion to combine the Johnson and Kassai references. The Johnson and Kassai references are quite dissimilar. The latch of Kassai moves and the Johnson latch is stationary. Kassai is used to latch portions of a baby carriage and Johnson latches a swinging door. It appears that examiner's only motivation to combine the references is hindsight reconstruction.

The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself. In re Oetiker, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992)

Examiner is using applicant's invention as a blueprint to combine two dissimilar patents.

Further, it may be argued that Kassai teaches away from applicant's invention. Kassai teaches a rotary latch, but applicant's device teaches a stationary latch. Further, neither reference teaches a handle that is radially biased, such that a locking portion of the handle is retained in the extension passage. The case of Akzo N.V. v. United States International Trade Commission, 1 USPQ 2d 1241, 1246 (Fed. Cir. 1986) does not

allow the use of prior art to teach away from an applicant's invention:

[P]rior art references before the tribunal must be read as a whole and consideration must be given where the references diverge and teach away from the claimed invention. . . . Moreover, appellants cannot pick and choose among individual parts of assorted prior art references "as a mosaic to recreate a facsimile of the claimed invention."

There would be no reasonable expectation of success, because neither of the references provide an extension passage that leads into an extension slot. Relative to claim 14, neither reference teaches or suggests a handle that is radially biased, such that a locking portion of the handle is retained in the extension passage. Neither reference disclose a locking portion that will be retained in a locking slot, if the locking portion is not pivoted out of the extension passage. Since both patents fail to disclose key elements required to construct applicant's invention, the one of ordinary skill in the art would have to become an inventor to produce applicant's invention.

Neither prior art reference teaches or suggests the limitations of extension passage leading into the extension slot or the radially biased handle in claim 14. Applicant respectfully requests that examiner withdraw his rejection of claims 1, 8 and 14. Claims dependent upon newly allowable claims are also allowable.

Interview with Examiner

Applicant respectfully requests that examiner take note of the telephone interview that occurred on December 17, 2004. The following topics were discussed during the interview concerning the Office Action:

Amending claims 1, 8 and 14 to make them allowable.

C O N C L U S I O N

It is respectfully submitted that applicant has responded in a fully satisfactory manner to all matters at issue in this application, and this application is now in condition for allowance. In this regard, applicant has made every effort to comply with the requirements set forth in this Office Action as well as statutory requirements. Accordingly, applicant respectfully requests that the Examiner enter this amendment, allow the claims, and pass this application on to issue.

Respectfully submitted,



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